criminal tendencies. As a police constable he had imprudently chosen such a companion. He had been in the police force for some fifteen years without any blemish. This is his first conviction. In view of his clean record and this being his only known lapse into crime I consider that the sentence is a little harsh. Also with this conviction he would have lost certain benefits. I would therefore allow his appeal against sentence to the extent that his sentence is reduced to 12 months' imprisonment. In both cases the sentences are to be calculated from the date they both served their sentences.

First appellant's appeal dismissed. Second appellant's appeal against conviction dismissed; sentence reduced.

LAU CHUO KIEW v. HII CHEE SOON

[A.C.J. (Lee Hun Hoe J.) October 18, 1965]

[Sibu — Civil Appeal No. 11 of 1965]

Contract — Hwei — Claim by one member against another.

The appellant and the respondent were both members of a "hwei". The head of the "hwei" was originally one of the defendants but she had been made a bankrupt and disappeared. The learned magistrate found that there was no privity of contract between the appellant and the respondent and he dismissed the appellant's claim against the respondent. The appellant appealed.

Held: in a "hwei" the agreement is between each member and the manager or head and not between the members themselves and therefore the learned magistrate was correct in holding that there was no privity of contract between the appellant and the respondent.

Cases referred to:—

(1) *Lee Pee Eng* v. *Ho Sin Leow* [1958] S.C.R. 18.

(2) *Kong Mee Chon* v. *Tang Hie Hiong* Sibu High Court Civil Appeal No. 7 of 1961.

CIVIL APPEAL.

Parties in person.

Lee Hun Hoe J.: This is an appeal against the decision of the court of small causes, Sibu.

Appellant and respondent were both members of a "hwei" of which one Nguon Siew Moi was the "head". Although I note that from the plaint the "head" was named as one of the defendants it seems that when the case came up for hearing the "head" had disappeared from the scene, presumably after being made a bankrupt appellant was not interested in her.

Reference was made to a case of similar nature heard by another magistrate in the court of small causes, Sibu (No. 14/65) in which appellant succeeded in her claim against a member of a "hwei". I need only say that the trial magistrate was not bound by that case. In a "hwei" the agreement in between each member and the manager or "head" and not between the members themselves: *Lee Pee Eng* v. *Ho Sin Leow.*[1] This was adopted by Lascelles J. in *Kong Mee Chon* v. *Tang Hie Hiong.*[2] The view is that in a "hwei" there is only one person who has anything to do with the running of it and he is the manager or "head". He is the person responsible for initiating the "hwei", collecting the subscriptions, receiving tenders and paying out to successful tenderer. He is in the supreme position of trust and in many instances he is held responsible if a member defaults.

Appellant contended that she had a document purported to be a promissory note which she stated she obtained from the "head". This document had on it a stamp of ten cents only. If it were her contention that the document is a promissory note then it should not have been admitted by reason of section 8 of the Stamp Ordinance for article 39 of the First Schedule of the said Ordinance a promissory note attracts a stamp duty of ten cents for every $100 or part thereof. In any event the document was admitted in the lower court and the trial magistrate decided the case on its merits. In effect he found that there was no privity of contract between the appellant and respondent and dismissed the claim. I have no reason to interfere with his finding. The appeal is dismissed with costs.

Appeal dismissed.

LEE KING HUNG v. LOH HUA YONG

[A.C.J. (Lee Hun Hoe J.) October 19, 1965]

[Sibu — Civil Appeal No. 8 of 1965]

Stamp Ordinance (Cap. 32) ss. 8 and 9 — Document improperly stamped — No objection taken at trial — Whether document promissory note or mere agreement.

This was an appeal against the decision of the magistrate and one of the grounds of appeal was that the learned magistrate erred in law in admitting a promissory note in evidence as the document was not properly stamped in accordance with the Stamp Ordinance. No objection was taken to the admission of the document at the trial.

Held: (1) if the document was improperly stamped, the appellate court must hold that it was wrongly admitted, despite the fact that no objection to its admission was raised at the trial;

(2) in this case the document was not a promissory note but merely an agreement or memorandum and it was therefore properly stamped.

Case referred to:—

(1) *Routledge* v. *McKay & Ors.* [1954] 1 All E.R. 855, 856.

CIVIL APPEAL.

George Seah Kim Seng for the appellant.

C. T. Wong for the respondent.

Lee Hun Hoe J.: Originally appellant appealed against the decision of the learned magistrate sitting in the district court, Sibu on four grounds but subsequently he abandoned one.